

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

FILED - CLERK
U.S. DISTRICT COURT

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TX EASTERN - LUFKIN

BY Debbie Hark

ALEXIS M. HERMAN,
Secretary of Labor,
United States Department of Labor,

Plaintiff,

v.

TYSON FOODS, INC.

Defendant.

FILE NO.

9:99cw132

COMPLAINT
(Injunctive Relief Sought)

Plaintiff brings this action pursuant to § 17 of the Act, 29 U.S.C. § 217, to have Defendant enjoined from violating the provisions of §§ 7, 15(a)(1), and 15(a)(2) of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201, et seq., hereinafter the Act. Plaintiff brings this action pursuant to § 16(c) of the Act, 29 U.S.C. § 216(c), to recover unpaid overtime compensation, together with an equal amount as liquidated damages or in the alternative to have Defendant restrained from withholding unpaid overtime compensation pursuant to § 17 of the Act, 29 U.S.C. § 217.

I

This Court has jurisdiction over this action pursuant to § 17 of the Act and 28 U.S.C. § 1345 and, in addition thereto or alternatively, pursuant to § 16(c) of the Act and 28 U.S.C. § 1331.

II

Defendant, Tyson Foods, Inc., at all times hereinafter mentioned, has been a corporation having a place of business and doing business in Shelby County, Texas, within the jurisdiction of this Court.

III

At all times hereinafter mentioned:

A. Defendant employed and is now employing employees engaged in live haul work which includes the catching of chickens for transportation, processing, and shipment in interstate commerce. By reason of the aforesaid activities, such employees have been and are engaged in commerce or in the production of good for commerce within the meaning of the Act.

B. Defendant engaged and is now engaging in related activities performed either through unified operation or common control for a common business purpose and constitutes an enterprise within the meaning of § 3(r) of the Act, 29 U.S.C. § 203(r); and

C. Such enterprise, employing employees engaged in commerce or in the production of goods for commerce, or employees handling, selling or otherwise working on goods or materials that have been moved in or produced for commerce; and having an annual gross volume of sales made or business done of not less than \$500,000 (exclusive of excise taxes at the retail level which are separately stated), constitutes an enterprise engaged in commerce or in the production of goods for commerce, within the meaning of § 3(s)(1)(A) of the Act, 29 U.S.C. § 203(s)(1)(A).

IV

Since June 1997, Defendant repeatedly violated and is now violating the provisions of §§ 7 and 15(a)(2) of the Act, 29 U.S.C. §§ 207 and 215(a)(2), by employing, at its Center, Texas facility, its chicken-catcher employees who were engaged in commerce or in the production of goods for commerce or employed in an enterprise engaged in commerce or in the production of goods for commerce, for workweeks longer than 40 hours without compensating such employees for their employment in excess of such hours at rates not less than one and one-half times the regular rates at which they were employed.

V

Since June 1997, Defendant violated and is now violating the provisions of section 15(a)(1) of the Act, 29 U.S.C. § 215(a)(1), in that it shipped, delivered, or sold in commerce or with knowledge that shipment, delivery, or sale in commerce was intended, goods in the production of which its live-haul employees were employed in violation of Section 7 of the Act as herein above alleged.

WHEREFORE, cause having been shown, Plaintiff prays for Judgment against Defendant as follows:

(1) For an Order pursuant to section 17 of the Act, permanently enjoining and restraining Defendant, its officers, agents, servants, employees, and all persons in active concert or participation with Defendant, from prospectively violating the provisions of sections 7, 11(c), 15(a)(1), and 15(a)(2) of the Act; and

(2) For an Order,

(a) pursuant to section 16(c) of the Act finding Defendant liable for unpaid overtime compensation found due Defendant's employees, and for liquidated damages equal in amount to the unpaid compensation found due Defendant's employees listed on the attached Schedule A (additional overtime compensation and liquidated damages may be owed to certain employees presently unknown to Plaintiff for the period covered by this complaint); or, in the event liquidated damages are not awarded,

(b) pursuant to section 17 of the Act enjoining and restraining Defendant, its officers, agents, servants, employees, and those persons in active concert or participation with Defendant, from withholding payment of unpaid overtime compensation found due Defendant's employees and pre-judgment interest computed at the underpayment rate established by the Secretary of Treasury pursuant to 26 U.S.C. § 6621; and

(3) For an Order awarding Plaintiff the costs of this action; and

(4) For an Order granting such other and further relief as may be necessary and appropriate.

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